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When equality and diversity collide: The issue of religiously motivated reservations in employment

Religiously motivated reservations in employment occur when an employee refuses to carry out certain job tasks or certain practices at work, with reference to his or her religion. Such reservations – and the extent to which an employer must or should accommodate them – may involve complex considerations of a practical, financial, ethical, legal etc. nature. In many cases, and in particular where the said reservation does not affect others to any extent noteworthy, the employer will be able to find practical solutions to the situation that has occurred. This topic, however, becomes more complicated where the nature of the reservation put forward directly affects *the rights and freedoms of others* – often meaning women and sexual minorities. In the last years, there are several instances where religiously motivated reservations in employment have become subject to legal adjudication on both supranational level (through the European Court of Human Rights) and on domestic level (in domestic courts or in domestic supervisory organs established to enforce laws on equality and non-discrimination). Examples of religiously motivated reservations that affect the rights and freedoms of others are: the registrar who objects to participating in the creation of same-sex civil partnerships; the relationship counsellor who objects to providing counselling services to same-sex couples; the first-line-service doctor who refuses to insert intrauterine contraceptive coils on women; and the male public school assistant who refuses to shake hands with women.

The key legal question is whether an individual has a legal right – under human rights law and/or non-discrimination law – to have the claim for reservation accepted by the employer, even when the employer refuses to grant such a claim. If the answer to such a claim is *no*, the consequence may be that the individual has to find another job – a job that does not necessitate the accommodation of the said reservation. If the answer is *yes*, the consequence is that the employer has to accommodate the request for reservation – with the effects this reservation may have on others. Thus, the accommodation of religiously motivated reservations can be understood as a means to promote diversity.

The fact that religiously motivated reservations often affect women and sexual minorities as groups, means that this is a field where equality and diversity may collide. In this presentation, I aim to display how equality – in its structural group oriented dimension - comes into the picture as an aim that may justify a restrictive interpretation of legal claims for diversity. Equality in its structural dimension has a formal legal basis in sources such as the European Convention on Human Rights Article 14 and in the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW). However, as will be discussed, there is a tendency that equality is considered to be less important than diversity, at least in Norwegian domestic adjudication.